vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.3953 OF 2007**

M/s.Suresh Auto & Anr. ... Petitioners

V/s.

Shivanand Bacha Singh ... Respondent

Mr.S.H. Joshi with Mr.Sunil Bhatia for Petitioners
Mr.Y.M. Pendse for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 3, 2007**

**P.C.:**

. The petition has been filed against the order of the Labour Court rejecting the application filed by the petitioners for dismissal of the complaint. The Labour Court has considered the application to be premature and, therefore, dismissed the same. The petitioners had raised in its written statement a plea that the respondent was not their workman. The petitioners relied on various judgments of the Supreme Court in *Cipla Ltd. v/s. Maharashtra General Kamgar Union*, **(2001) I CLR 754,** *Vividh Kamgar Sabha v/s. Kalyani Steels Ltd.*, **2001(1) ALL MR 860 (SC);** *Sarva Shramik Sangh v/s. M/s.Indian Smelting & Refinign Co. Ltd.*, **2003(7) Supreme 523** to submit that the complaint itself was not maintainable. The Labour Court has dismissed the application holding that it was premature. However, the Labour Court ought to have considered the aforesaid

judgments and ought to have ascertained whether an employer-employee relationship exists. This enquiry ought to have been conducted in the light of the aforesaid judgments and the judgment of this Court in the case of *Akhil Bharatiya Shramik kamgar Union v/s. Buildtech Constructions*, **2004(3) ALL MR 23.**

2. In view of this, the Labour Court is directed to ascertain as to whether there is an employer-employee relationship between the petitioners and the respondent before deciding other issues on merits.

3. Petition is disposed of accordingly.